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AMENDING SECTION 606 (c) OF COMMUNICATIONS ACT  
OF 1934 (ELECTROMAGNETIC RADIATIONS)

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SEPTEMBER 19, 1951.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. GRANAHAH, from the Committee on Interstate and Foreign  
Commerce, submitted the following

R E P O R T

[To accompany S. 537]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 537) to further amend the Communications Act of 1934, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 2, line 12, after the period and before the quotation marks, insert the following sentence:

The authority granted to the President, under this subsection, to cause the closing of any station or device and the removal therefrom of its apparatus and equipment, or to authorize the use or control of any station or device and/or its apparatus and equipment, may be exercised in the Canal Zone.

Page 2, strike out line 15 and all that follows through line 4 on page 3, and insert in lieu thereof the following:

(h) Any person who willfully does or causes or suffers to be done any act prohibited pursuant to the exercise of the President's authority under this section, or who willfully fails to do any act which he is required to do pursuant to the exercise of the President's authority under this section, or who willfully causes or suffers such failure, shall, upon conviction thereof, be punished for such offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both, and, if a firm, partnership, association, or corporation, by fine of not more than \$5,000, except that any person who commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both.

This proposed legislation has the approval of the Federal Communications Commission, the Department of the Air Force, the Department of Commerce, and the Federal Civil Defense Administration, as will appear from letters, dated August 13, August 17, August 22,

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and August 21, 1951, respectively. These communications are printed below in this report.

### PURPOSE OF BILL

The purpose of the bill, S. 537, as passed by the Senate is to clarify the scope of the President's powers provided for in section 606 (c) of the Communications Act of 1934, as amended.

Section 606 (c) now provides, in substance, that the President shall have authority, upon proclamation of war, threat of war, state of public peril or disaster, or other national emergency, or in order to preserve the neutrality of the United States, for such time as he may see fit, to—

- (1) Suspend or amend the rules and regulations of the Federal Communications Commission applicable to any radio station within the jurisdiction of the United States;

- (2) Order the closing of any station for radio communication and the removal of its apparatus and equipment; or

- (3) Authorize any department of the Government to use or control any such station and/or its apparatus and equipment under such regulations as he may prescribe upon just compensation to the owners.

The language contained in section 606 (c) with respect to "station for radio communication" created a doubt in the minds of the Department of Defense whether the afore-mentioned Presidential powers of use, closure, and control included radio facilities not primarily intended for radio communication which the Department of Defense believed might be useful for navigational-aid purposes to a potential enemy. This doubt prompted the Department of Defense to seek the clarifying legislation contained in this bill.

Section 1 of the bill would accomplish the objectives of the Department of Defense in clarifying the scope of the Presidential powers under section 606 (c) to use, control, and close radio facilities of all kinds which might be potentially useful to an enemy for navigational-aid purposes. This section in no way modifies or affects the jurisdiction of the Federal Communications Commission.

Section 2 of the bill would provide a new subsection, numbered section 606 (h), which provides criminal sanctions for the violation of any order issued pursuant to an exercise of the President's authority under section 606.

### GENERAL STATEMENT

Current concepts of warfare and recent experience demonstrate the necessity to control electromagnetic radiations in the United States, its Territories, and possessions for the purpose of denying their use to a potential enemy for navigation of piloted or pilotless aircraft or missiles directed toward targets in the United States.

Testimony before the committee demonstrates to the committee's satisfaction that this legislation must be provided now in order that further planning and preparation may be completed and that action may be taken without delay in the event of an impending air attack on the United States, its Territories, and possessions.

The Department of Defense testified that there is evidence that potential enemies possess the atomic bomb and are striving to develop long-range piloted aircraft and guided missiles for carrying the

atomic bomb. According to the Department of Defense, apparatus and devices from which electromagnetic radiations emanate are excellent navigational aids for aiming these weapons at targets in the United States, its Territories, and possessions.

The Department of Defense further testified that during World War II the German military made some use of electromagnetic radiations emanating from the British Isles as aids to air navigation and that German scientists now working for Soviet Russia are believed to be working toward the development of equipment capable of utilizing electromagnetic radiations to be used in case of war with the United States.

The limitations provided for in the bill that the radiation must be effective beyond 5 miles and must be suitable for use as a navigational aid appropriately exempts from the provisions of the bill any devices which, though capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, cannot be effectively used as a navigational aid by a potential enemy for the navigation of piloted or pilotless aircraft or missiles.

#### COMMITTEE AMENDMENTS

The committee has reported the bill favorably with two amendments.

One amendment modifies section 2 of the bill by adding a more severe penalty in those instances in which the offender commits the offense with intent to injure the United States or with intent to secure an advantage to any foreign nation. In such case, the offender shall be punished upon conviction by a fine of not more than \$20,000 or by imprisonment of not more than 20 years, or both. This amendment follows the pattern of the penal provisions of the Atomic Energy Act of 1946 (U. S. C., title 42, sec. 1816 (b)).<sup>1</sup>

The other amendment provides that the President's authority under section 606 (c) with respect to stations and devices may be exercised in the Canal Zone. This amendment is made necessary by a provision contained in section 2 of the Communications Act of 1934 which provides that the act shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone or to wire or radio communication or transmission wholly within the Canal Zone. It is the view of the committee that these powers of the President under section 606 (c) should extend to the area of the Canal Zone.

The bill, S. 537, as proposed to be amended by the committee has the support not only of all of the interested agencies of the Government but also of interested industries represented by the National Association of Radio and Television Broadcasters and the Radio-Television Manufacturers Association.

<sup>1</sup> U. S. C., title 42, sec. 1816 (a), provides the death penalty or imprisonment for life, upon recommendation of the jury, for the violation of certain sections of the Atomic Energy Act of 1946 in case such violation is committed with intent to injure the United States. Where the same offense is committed with intent to secure an advantage to any foreign nation or in cases where the offense is committed with intent to injure the United States but where the jury does not recommend the death penalty or imprisonment for life, the penalty is a fine of not more than \$20,000 or imprisonment of not more than 20 years, or both. The same penalty of a fine of not more than \$20,000 or imprisonment for not more than 20 years or both is provided in the Atomic Energy Act for the violation of rules and regulations prescribed or issued by the Commission pursuant to certain provisions of the act, where such offense is committed with intent to injure the United States or with intent to secure an advantage to any foreign nation.

#### 4 AMENDING SECTION 606 (C) OF COMMUNICATIONS ACT OF 1934

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington 25, D. C., August 13, 1951.*

Hon. ROBERT CROSSER,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN CROSSER: This is in response to your letter of July 25, 1951, requesting a report and comment on Senate bill No. 537, which is a bill, passed by the Senate on July 23, 1951, to amend section 606 of the Communications Act of 1934, as amended.

The purpose of section 1 of this bill is to clarify the provisions of existing law, as stated in section 606 (c) of the Communications Act, so that there would be no doubt that the powers of the President as given by that section would be clearly broad enough to encompass the control, closure and use, not only of stations for radio communication, but also of electronic devices of all kinds capable of emitting electromagnetic radiations within certain frequency limits which might be of navigational aid beyond a specified distance to the aircraft or missiles of an enemy engaged in an attack by air upon this country. The purpose of section 2 of the bill is the establishment of certain criminal sanctions which would be available in aid of the enforcement of the powers of the President as given by all of section 606 of the Communications Act including, of course, section 606 (c) as it would be amended by section 1 of this bill.

Section 606 (c) provides, in substance, that the President shall have authority, upon proclamation of war, threat of war, state of public peril or disaster, or other national emergency, or in order to preserve the neutrality of the United States, for such time as he may see fit, to suspend or amend the rules and regulations of this Commission applicable to "any radio station" within the jurisdiction of the United States, and to order the closing of "any station for radio communication" and the removal of its apparatus and equipment, or to authorize any department of the Government to use or control "any such station and/or its apparatus and equipment," under such regulations as he may prescribe, upon just compensation to the owners.

As appears from the preceding paragraph, section 606 (c) speaks in terms of the use, closure, and control "of any station for radio communication." The history of the consideration of this bill in the Senate shows that this particular language of section 606 (c) created a doubt in the minds of the Department of Defense whether the Presidential powers of use, closure, and control as given by section 606 (c) included radio facilities not primarily intended for radio communication which the Department of Defense believed might be useful for navigational aid purposes to a potential enemy. This doubt prompted the Department of Defense to seek clarifying legislation, and Senate bill No. 537 resulted.

The Commission is of the opinion that section 1 of the bill would accomplish the objectives of the Department of Defense in clarifying the scope of the Presidential powers under section 606 (c) to use, control, and close radio facilities of all kinds which the Department of Defense believed might be potentially useful to an enemy for navigational-aid purposes. Moreover, the Commission is of the opinion that such clarification is desirable.

With respect to section 2 of the bill, which would provide a new subsection, numbered 606 (h), establishing certain criminal sanctions for the knowing violation of any order issued pursuant to an exercise of the President's authority under section 606, the Commission is of the opinion that such an amendment should be adopted since there exists a question as to whether there is any criminal sanction for willful or knowing violation of orders issued pursuant to an exercise of the existing authority of the President under section 606; addition of the proposed new language in section 606 (c) to clarify the scope of the President's authority under that section as including electronic devices not primarily intended for communications purposes, makes it especially desirable that sanctions for violations of orders issued pursuant to an exercise of the President's authority under section 606 be expressly spelled out in section 606.

None of the specific subsections of section 606 contains, in itself, any criminal sanction or penalty, nor is there any one criminal provision, expressly applicable to section 606 as a whole. It is, therefore, necessary to look to the general criminal provisions of the Communications Act which are found in sections 501 and 502, in order to determine whether and to what extent these general provisions are applicable to an exercise of the President's authority under section 606. Section 501 makes it a felony, punishable by a fine up to \$10,000 or imprisonment up to 2 years, for any person willfully and knowingly to do anything "in this act prohibited or declared to be unlawful" or to fail to do anything "in this act

required to be done" or to cause or suffer "such omission or failure." It is to be noted, however, that none of the provisions of section 606, in and of themselves, requires anybody to do anything, or to refrain from doing anything; instead they authorize the President, or his delegate, to take certain types of action. Thus, for example, if the President ordered a radio station to be closed, or if, as would be clearly possible under the proposed new language of section 606 (c), the President's delegate ordered the operators of certain types of electronic equipment to refrain from operating such equipment during the hours in which an air raid is in progress, it could be argued that persons refusing to comply with such orders are doing nothing prohibited by or declared unlawful "in this act" or refusing to do things "in this act required to be done." Thus, it is possible that violations of orders made pursuant to an exercise of the President's authority under section 606 would be held not to be in violation of section 501 of the Communications Act.

The other criminal provision of the Communications Act, section 502, would appear to be even more doubtful of application. This section makes it a misdemeanor, punishable by a fine of \$500 for each day of offense, for any person who willfully or knowingly violates any "rule or regulation, restriction or condition made or imposed by the Commission under the authority of this act \* \* \* or made or imposed by any international or wire communications treaty or convention \* \* \*". The difficulty with this provision is that, except for violations of treaty regulations, not relevant to the present discussion, it is restricted to violations of rules and regulations "made or imposed by the Commission under the authority of this act." In view of the strict construction of any criminal sanction in any statute, it is possible that any order or rule issued pursuant to an exercise of the President's authority under section 606 of the act may not be considered to be one "made or imposed by the Commission under the authority of this act." For even if the rule or order were formally issued by the Commission, operating pursuant to the direction or authority of the President, it may be considered incongruous to hold that violation of a rule, regulation, restriction, or condition prescribed by the Commission under delegation of authority from the President would be a criminal offense where it would not be a criminal offense to violate the same kind of rule, regulation, restriction, or condition if issued by the President himself or by any other Presidential delegate.

For the reasons above indicated, the Commission believes that a new subsection should be written into section 606 incorporating express criminal sanctions for the knowing violation of its provisions. Moreover, section 2 of the bill appears to us to achieve this general objective. As to the particular details of the criminal sanctions set forth in this section 2, we refrain from taking any specific position for the reason that that is considered to be a matter which is not within the special competence of this Commission.

The Commission appreciates this opportunity to comment on Senate bill 537, and will, of course, be available to afford you or your committee's staff such additional assistance as you may desire.

The Bureau of the Budget has informed us that it has no objection to the submission of these comments to your committee.

By direction of the Commission:

WAYNE COY, *Chairman.*

DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE ASSISTANT SECRETARY,  
*Washington, August 17, 1951.*

Hon. ROBERT CROSSER,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives.*

DEAR MR. CHAIRMAN: I refer to your request for the views of the Department of Defense with respect to S. 537, an act to further amend the Communications Act of 1934. The Secretary of Defense has delegated to this Department the responsibility for expressing the views of the Department of Defense.

The purpose of S. 537 is to provide more adequate Federal control in regard to all stations or devices capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles which are suitable for use as a navigational aid beyond 5 miles.

Current concepts of warfare and recent experience demonstrate the necessity to control electromagnetic radiations in the United States, its Territories and possessions, for the purpose of denying their use to a potential enemy for naviga-

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tion of piloted or pilotless aircraft or missiles directed toward targets in the United States.

The authority of this proposed legislation must be provided now in order that further planning and preparation may be completed and air defense plans implemented without delay in the event of an air attack. It is requested that further justification for the urgent necessity of this legislation be given to you in secret session. The Department of Defense concurs in S. 537 as passed by the Senate and requests that your committee hold hearings at an early date.

The Department of Defense is unable to estimate the fiscal effects of the proposed legislation.

This report has been coordinated among the departments and boards of the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted and advises that this legislation would be in accord with the program of the President.

Sincerely yours,

R. L. GILPATRIC,  
*Assistant Secretary of the Air Force.*

AUGUST 22, 1951.

HON. ROBERT CROSSER,

*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in further reply to your request dated July 25, 1951, for our comments with respect to S. 537, an act to provide for the greater security and defense of the United States against attack, and for other purposes.

This act would provide authority for administrative control of electromagnetic radiation whenever such control is deemed necessary to prevent or minimize use of such radiation as a navigational aid in an attack upon the United States.

The coverage of S. 537, as approved by the Senate, is limited to those radiations which would appear to assist enemy navigation. In our opinion, this amendment effects an improvement of the bill as originally introduced. Legislation as here proposed is necessary for our national security and we therefore recommend its enactment.

We are advised by the Bureau of the Budget that it would interpose no objection to the submission of this report. If we can be of further assistance in this matter, please call on us.

Sincerely yours,

THOMAS W. S. DAVIS,  
*Acting Secretary of Commerce.*

FEDERAL CIVIL DEFENSE ADMINISTRATION,  
*Washington 25, D. C., August 21, 1951.*

HON. ROBERT CROSSER,

*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington 25, D. C.*

DEAR MR. CHAIRMAN: Reference is made to your letter of August 10, 1951, requesting a report by the Federal Civil Defense Administration on S. 537, Eighty-second Congress, an act to further amend the Communications Act of 1934 which, as amended, passed the Senate on July 23, 1951. The bill would amend section 606 of the Communications Act of 1934, as amended, to extend the President's authority to control or use radio stations to cover all devices emitting electromagnetic radiations capable of being utilized by an enemy for navigational purposes.

While we recognize the military necessity for a plan which would minimize the use of electromagnetic devices by an enemy for navigational purposes in an air attack against the United States, we are vitally concerned about the adoption of any measure for radio control which might deny civil-defense authorities the use of broadcasting facilities during a civil-defense emergency. As the Committee is undoubtedly aware, under the terms of the Federal Civil Defense Act of 1950 (Public Law 920, 81st Cong.), the Administrator is charged with the responsibility of making appropriate provisions for necessary civil-defense communications and for dissemination of warnings of enemy attacks to the civilian population.

We have been assured that the planning for the emergency control of communications devices does not contemplate action which would deny to the Federal Civil Defense Administration the use of communications facilities vital to the execution of our mission. Accordingly, in the light of this assurance, we are pleased to recommend favorable consideration of the bill in the interest of national security.

We are advised that the Budget Bureau has no objection to the submission of this report.

Sincerely,

J. J. WADSWORTH,  
Deputy Administrator.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as passed by the Senate, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

#### SECTION 606 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

##### WAR EMERGENCY—POWERS OF PRESIDENT

Sec. 606. (a) During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this Act. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is hereby authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

(b) It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: *Provided*, That nothing in this section shall be construed to repeal, modify, or affect either section 6 or section 20 of an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

(c) Upon proclamation by the President that there exists war or a threat of [war or] *war*, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the [President may.] *President, if he deems it necessary in the interest of national security or defense, may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations or devices capable of emitting electromagnetic radiations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio [communication and] communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station or device and/or its apparatus and [equipment by] equipment, by any department of the Government under such regulations as he may [prescribe, upon] prescribe upon just compensation to the owners.*

(d) Upon proclamation by the President that there exists a state or threat of war involving the United States, the President, if he deems it necessary in the interest of the national security and defense, may, during a period ending not later than six months after the termination of such state or threat of war and not

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later than such earlier date as the Congress by concurrent resolution may designate, (1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, (2) cause the closing of any facility or station for wire communication and the removal therefrom of its apparatus and equipment, or (3) authorize the use or control of any such facility or station and its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

(e) The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control. Such suit shall be brought in the manner provided by paragraph 20 of section 24, or by section 145, of the Judicial Code, as amended.

(f) Nothing in subsection (c) or (d) shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by any communication system or systems.

(g) Nothing in subsection (c) or (d) shall be construed to authorize the President to make any amendment to the rules and regulations of the Commission which the Commission would not be authorized by law to make; and nothing in subsection (d) shall be construed to authorize the President to take any action the force and effect of which shall continue beyond the date after which taking of such action would not have been authorized.

(h) *Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing prohibited or declared to be unlawful pursuant to the exercise of the President's powers and authority under this section, or who willfully and knowingly omits or fails to do any act, matter, or thing which he is required to do pursuant to exercise of the President's powers and authority under this section, or who willfully and knowingly causes or suffers such omission or failure shall, upon conviction thereof, be punished for such offense by a fine of not more than \$1,000 or by imprisonment for a term of not more than one year, or both, and, if a firm, partnership, association, or corporation, be fined not more than \$5,000.*

